

Information Commissioner's Office

# Call for evidence:

## Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018



# Introduction

---

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

### **The scope of the Code**

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

**Download this document and email to:**

[childrenandtheGDPR@ICO.org.uk](mailto:childrenandtheGDPR@ICO.org.uk)

**Print off this document and post to:**

Age Appropriate Design Code call for evidence  
Engagement Department  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email [childrenandtheGDPR@ICO.org.uk](mailto:childrenandtheGDPR@ICO.org.uk)

## **Privacy statement**

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

# Section 1: Your views and evidence

---

Please provide us with your views and evidence in the following areas:

## **Development needs of children at different ages**

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report Digital Childhood – addressing childhood development milestones in the Digital Environment as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its literature review of Children’s online activities risks and safety.

The proposed age ranges are as follows:

3-5  
6-9  
10-12  
13-15  
16-17

Q1. In terms of setting design standards for the processing of children’s personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

### **Very appropriate**

**Q1A.** Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children’s personal data by providers of ISS (online services),

**All children of course develop at varying rates but we still must consider that there are generally accepted stages which is reflected across education, the law and social norms.**

**It is our view that this is more about respecting their eventual autonomy and considering differing needs rather than a heavy-handed age-banded approach.**

**Q2.** Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

**Children's development is not specific to the digital environment but rather must be considered as an overall consideration of their critical thinking skills and understanding at each stage of their development.**

**We need to consider as a priority their capacity to make informed choices, understand instructions and an ability to understand the implications of the use of their data. Ditch the Label feels that the different age groups suggested by the Commissioner takes this broadly into account and allows for their development through each stage.**

### **The United Nations Convention on the Rights of the Child**

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

**Q3.** Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

**Article 3 states that in all actions concerning children, "*the best interests of the child shall be a primary consideration.*" Although it must be said that digital technologies are not yet recognised it is widely understood that rights are not context specific.**

**Additionally:**

**Article 14 – promotes "the full respect of children as rights holders" and that their best interests may be "the paramount consideration."**

**Article 20 – implementation of the rights should take into account "children's development and their evolving capacities."**

**Article 20 also reminds us that policies often fail to address adolescents. This is a vital time in their life and mistakes here can have huge implications of their mental health, development and wellbeing.**

**There are various other articles that address children's right not to be discriminated against and to allow them to express their views in regard to matters which concern them and to have**

**freedom of expression and to seek, receive and impart information and ideas of all kinds.**

**Children are also provided with the right to rest and leisure time and the right to be protected from information / material that is injurious to their wellbeing. (*Article 17*)**

**It is addressed in *article 5* that parents have the duty, right and responsibility to provide care and direction in response to their evolving capacities.**

**In 2017 the UNHRC clarified that a child is any person aged under 18 and that when forming a data protection code for children their best interests are of paramount consideration.**

### **Aspects of design**

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

**Q4.** Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

**Q5.** Please provide any views or evidence you have on the following:

**Q5A.** about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

**Q5B.** about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

**Q5C.** about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

**Q5D.** examples of ISS design you consider to be good practice.

***Default privacy settings:***

**Such settings determine the extent to which and where a child's data is processed (advertising, other customers, clients, public authorities, third sector, commercial companies).**

**The settings also dictate how personal data is processed, collected, used, shared, and for how long.**

**Default privacy settings should be standard and of the highest privacy settings before a user chooses to change them. Children in particular rarely change such settings (so they should as a standard be of the highest) and view constant tick boxes of consent to be a nuisance so they rarely read them. Having privacy settings set as the highest possible level as default will take away the often cumbersome task of ensuring children do this themselves.**

**Tech updates should also take this into account and NOT default back to low privacy settings.**

**We know from our work that children often don't understand the concept of data privacy and that T&C's from many websites are aimed at someone with an undergraduate degree with little consideration for children's understanding.**

**Children are also often shocked at the lack of online privacy and assume most of their 'online life' is private. They usually do not realise that social media companies routinely monitor and collect their data and usage.**

**It should not fall upon children to evaluate the consequences of data protection upon their future when often, several years of data processing will have occurred before they reach that skill set.**



**Many children are often unaware of the difference between a public and private profile and the onus should not fall upon their shoulders when little is currently known about potential long-term consequences.**

**With many young people having a digital footprint from before birth it is inherently unfair to hold and share such information. The DCMS's Secure by Design (2018) report found that privacy settings were given far too low priority and that expectations were placed on consumers in this area and usually the language was not age appropriate.**

**Children are often unaware of risk and parents often have gaps in knowledge regarding practical application of usage. Children should be given frequent option to delete data and data should be deleted on closing an app.**

**T&C's should be available in the plainest of language and age appropriate for all users as they often have no idea what they are signing up to and there should be an 'opt-in' rather than an 'opt-out' option.**

**The current system of "take it or leave it" on T&C's means many children simply sign up rather than be locked out of a service.**

**Tracking of users' location even when they are not using the app should not be a default setting and often children have no idea that their location is even being tracked.**

**Given how vulnerable children are to advertising, transparency should be standard on paid-for-content, marketing and product placement from commercial companies so they are easily able to identify it.**

**Q5E.** about any additional areas, not included in the list above that you think should be the subject of a design standard.

**Education (along the lines of media information literacy) written into education as standard and revisited at different stages of education.**

**Q6.** If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

**Name:** [REDACTED]

**Email:** [REDACTED]

**Brief summary of what you think you could offer: Ditch the Label work with thousands of young people every month who are impacted on all levels of their life by digital technology. Our insight and experience is extensive and we would welcome continued involvement to benefit the lives of children and young people.**

**Further views and evidence**

**Q7.** Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

**Commercial companies will often tell you that 'kids understand the online world' but our direct experience is that they are frequently impacted. The commissioner should have children front and centre of this and not commercial driven companies.**

**We support 5Rights suggested guiding principles:**

- **In determining standards and what measures must be taken, the best interests of the child must be the paramount consideration**
- **A high bar of privacy by default; i.e. safety by design, privacy by design and high privacy by default should be the norm for all products and services' features and functionalities *likely to be accessed by children***
- **Responsibility for data protection rests with online services, not the child**
- **Responsibility for enforcement rests with the regulator, not the child**
- **The impact of service design on children (under 18) must be considered in advance**
- **The Code must reflect and/or enhance, never lessen, existing regulations, legislation, international agreements and cultural norms that protect children in other contexts, by incorporating and applying them so that they are enforceable in the digital environment**
- **The Code must give clarity to the General Data Protection Regulation's ("GDPR") assertion that "children merit specific protection"**
- **The Code must reflect and address the needs and concerns articulated by children themselves**
- **That children have different needs at different ages and stages of development and these must be considered when designing services**
- **Online services have a duty to uphold the spirit as well as the letter of the Code**

## Section 2: About you

---

### Are you:

A body representing the views or interests of children? Please specify: <b>We are an anti-bullying charity and work with children / young people aged 12-25</b>	<input checked="" type="checkbox"/>
A body representing the views or interests of parents? Please specify: <b>As a secondary area of our work regarding the above</b>	<input checked="" type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify: <b>We provide support via our online community</b>	<input checked="" type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

**Thank you for responding to this call for evidence.  
We value your input.**